Supreme Court, U.S.
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No.

In The
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1994

JAMES WILLIAM RINIER AND CARMELLA FORZIATI,
Petitioners,

-versus-

STATE OF NEW JERSEY,
Respondent.

Petition for Writ of Certiorari to the Supreme Court of New Jersey

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Is the operation of the two income tax rate schedules in New Jersey that tax married persons at a higher rate when both have income and file jointly for federal purposes arbitrary and discriminatory and therefore, in violation of due process and equal protection of the U.S. Constitution?

TABLE OF CONTENTS

Page

Question Presented.....i

Table of Contents.....ii

Table of Citations.....iii

Opinions Below.....1

Statement of Jurisdiction.....2

Constitutional Provisions and Statutes Involved.....2

Statement of the Case.....6

Reasons for Granting the Writ.....9

Conclusion.....18

TABLE OF CITATIONS

Page

Cases Cited:

Eric Peden v. State of Kansas
93 CV 415 (Kansas District Court, 1994).....12, 13

Evans v. Ross
57 N.J. Super. 223, (1959).....16

Fraser v. Robin Dee Day Camp
44 N.J. 480 (1965).....16

Hoeper v. Tax Commission of Wisconsin,
284 U.S. 206 (1931).....7, 9, 10, 11, 12

Levitt & Sons, Inc. v. Div. Against Discrimination, etc.
31 N.J. 514, appeal dismissed for lack of a substantial
federal question, 363 U.S 418 (1960).....16

Rinier v. State,
273 N.J. Super. 135, 641 A.2d 276 (1994).....1, 9

United States Constitution Cited:

Amendment 5.....2

Amendment 14.....3

Statutes Cited:

26 U.S.C. § 21(e)(2).....10

26 U.S.C. § 22(e)(1).....10

26 U.S.C. § 32(d).....11

26 U.S.C. § 63(c)(6).....11

28 U.S.C § 1257.....2

Homestead Property Tax Rebate Act of 1990,
Chapter 61, Laws 1990.....6

N.J.S.A. 10:5-3.....3, 15

N.J.S.A. 54A:2-1.....4, 6, 7, 8

N.J.S.A. 54A:8-3.1.....5, 6

APPENDIX

Appendix A - Judgment of the Supreme Court
of New Jersey, Filed October 11, 1994.....1a

Appendix B - Opinion of the Superior Court
of New Jersey, Appellate Division
Filed May 4, 1994.....2a

Appendix C - Opinion and Order Granting Defendant's
Cross Motion for Summary Judgment of the
New Jersey Tax Court, Filed October 23, 1992.....19a

Appendix D - Opinion and Order Granting Plaintiff's
Motion for Summary Judgment of the
District Court of Shawnee County, Kansas
Filed September 7, 1994.....22a

Appendix E - Kansas Secretary of Revenue's
September 27 Memo regarding Constitutionality of
State Income Tax, Dated September 27, 1994.....28a

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OPINIONS BELOW

The decision of the Supreme Court of New Jersey, Docket Number 38,660 (October 11, 1994), denying a petition for certification, is located in Appendix A to this Petition.

The decision of the Superior Court of New Jersey, Appellate Division, 273 N.J. Super. 135, 641 A.2d 276 (1994), affirming the

final judgment of the Tax Court of New Jersey, is located in Appendix B to this Petition.

The decision of the Tax Court of New Jersey, Docket Number 009672-92 (1992), granting defendant's motion for summary judgment is located in Appendix C to this Petition.

STATEMENT OF JURISDICTION

The judgment of the Supreme Court of New Jersey was entered on October 11, 1994. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

Amendment 5 of the United States Constitution provides in pertinent part:

> No person shall. . .be deprived of life, liberty, or property, without due process of law. . ..

Section 1, Amendment 14, of the United States Constitution provides in pertinent part:

> . . .No State shall. . .deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

New Jersey's Law Against Discrimination, N.J.S.A. 10:5-3 provides in pertinent part:

> The Legislature finds and declares that practices of discrimination against any of its inhabitants, because of . . .marital status . . . are matters of concern to the government of the State, and that such discrimination threatens not only the rights and proper privileges of the inhabitants of the State but menaces the institutions and foundation of a free democratic State. . .
>
> The Legislature intends that. . . this act shall be liberally construed in combination with other protections available under the laws of this State.

New Jersey, Homestead Property Tax Rebate Act of 1990, Chapter 61, Laws 1990 provides in pertinent part:[1]

* * *

12. N.J.S.A. 54A:2-1 is amended to read as follows:

. . .Imposition of tax. . .:

a. For married individuals filing a joint return . . .

If the taxable income is:	The tax is:
Not over $ 20,000.00	2% of taxable income
Over $ 20,000.00 but not over $ 50,000.00	$ 400.00 plus 2.5% of the excess over $ 20,000.00
Over $ 50,000.00 but not over $ 70,000.00	$ 1,150.00 plus 3.5% of the excess over $ 50,000.00
Over $ 70,000.00 but not over $ 80,000.00	$ 1,850.00 plus 5.0% of the excess over $ 70,000.00

[1] N.J.S.A. 54A:2-1 has been amended twice by New Jersey P.L. 1994, c.2, effective January 1, 1994 and New Jersey P.L. 1994, c.69, effective January 1, 1995 since the enactment of the New Jersey Homestead Property Tax Rebate Act of 1990 to reflect cumulative tax decreases in gross income-tax rates of 15%, 7.5% and 6%, depending on taxable income level. The decreases apply uniformly regardless of taxpayer's filing status and thus no effect on Petitioners' argument on appeal.

Over $ 80,000.00 but not over $ 150,000.00	$ 2,350.00 plus 6.5% of the excess over $ 80,000.00
Over $ 150,000.00	$ 6,900.00 plus 7.0% of the excess over $ 150,000.00

b. For married individuals filing separately, unmarried individuals. . .

If the taxable income is:	The tax is:
Not over $ 20,000.00	2% of taxable income
Over $ 20,000.00 but not over $ 35,000.00	$ 400.00 plus 2.5% of the excess over $ 20,000.00
Over $ 35,000.00 but not over $ 40,000.00	$ 775.00 plus 5.0% of the excess over $ 35,000.00
Over $ 40,000.00 but not over $ 75,000.00	$ 1,025.00 plus 6.5% of the excess over $ 40,000.00
Over $ 75,000.00	$ 3,300.00 plus 7.0% of the excess over $ 75,000.00

* * *

15. N.J.S. 54A:8-3.1 is amended to read as follows:

* * *

c. If the income tax liabilities of husband and wife are determined on a joint return for federal income tax purposes, they shall also file a joint return for New Jersey income tax purposes and their tax liabilities under this act shall be joint and several.

STATEMENT OF THE CASE

The following material facts are undisputed or beyond dispute. Petitioners, James William Rinier and Carmella Forziati filed a complaint against the state of New Jersey on April 14, 1992 challenging the constitutionality of the New Jersey Gross Income Tax rate that creates an additional tax for married persons when both have income and who file jointly over what they would have paid in total if they could have filed as unmarried individuals. The state of New Jersey filed an answer on May 6, 1992. The provisions of N.J.S.A. 54A:8-3.1, which requires a taxpayer to use the applicable rate schedule for New Jersey as determined for federal income tax purposes and N.J.S.A. 54A:2-1, which provides for graduated marginal rates, generates a marriage tax penalty for married couples when both have incomes. Both sections of the New Jersey Statutes Annotated have been amended by the Homestead Property Tax Rebate Act of 1990, Chapter 61, Laws 1990. The Petitioner must use the higher rate schedule per N.J.S.A. 54A:2-1 since they are filing jointly for federal tax purposes. When the

Petitioners filed their New Jersey Gross Income Tax for 1990 under the current law as jointly after reducing gross income with all proper deductions and exemptions, their tax liability was $946. If the Petitioners were allowed to use the rate schedule for unmarried individuals per N.J.S.A. 54A:2-1 (b), their total tax liability would have been $848 after reducing gross income with all proper deductions and exemptions. Thus, solely because the Petitioners are married filing jointly, their tax liability is $98 greater than if they could have each filed as unmarried. Petitioners request a declaratory judgment that the statute is unconstitutional because it violates the Due Process and Equal Protection clauses of the United States Constitution and that this type of tax is arbitrary and not within due process as decided by the U.S. Supreme Court in *Hoeper v. Tax Commission of Wisconsin*, 284 U.S. 206 (1931).

The Respondent moved on June 26, 1992 that this action should be transferred to the Tax Court from the Law Division of the Superior Court. On July 10, 1992, the Law Division of the

Superior Court ordered that this matter be transferred to the New Jersey Tax Court.

On August 14, 1992, Petitioners moved for a motion of summary judgment that declaratory judgment should be granted against the use of the two tax rates under N.J.S.A. 54A:2-1 when it creates an additional tax for married persons than if they were allowed to file as unmarried individuals. The Respondent filed a cross-motion for summary judgment on October 15, 1992. Petitioners filed a response to Respondent's cross-motion for summary judgment on October 19, 1992. After an oral hearing was held on October 23, 1992, the New Jersey Tax Court granted summary judgment in favor of the Respondent. See Appendix C.

Petitioners filed a Notice of Appeal on November 30, 1992 to the Appellate Division of the Superior Court of New Jersey. The Superior Court of New Jersey, Appellate Division affirmed the New Jersey Tax Court decision on May 4, 1994. See Appendix B. The

decision has been published, *Rinier v. State*, 273 N.J. Super. 135, 641 A.2d 276 (1994). Petitioners filed a Petition for Certification with the New Jersey Supreme Court on May 12, 1994. The New Jersey Supreme Court denied the petition for certification without opinion on October 11, 1994. See Appendix A.

REASONS FOR GRANTING THE WRIT

1. The New Jersey Supreme Court, a state court of last resort has denied the petition for certification from the decision of the New Jersey Superior Court, Appellate Division (at Appendix A) that has decided a federal question in a way that conflicts with a decision of this Court, *Hoeper v. Tax Commission of Wisconsin*, 284 U.S. 206 (1931). The New Jersey Superior Court, Appellate Division acknowledged key parts of the opinion *Hoeper*, supra, but stated that the case "may be distinguished" in *Rinier v. State*, supra, (See Appendix B, Page 17a). In *Hoeper*, supra, a married taxpayer challenged the Wisconsin income tax law that required a spouse's separate income to be aggregated. The combined incomes were taxed at a higher rate versus the lower available rates applicable to

the spouses' income were they able to file separately. The New Jersey Superior Court, Appellate Division distinguished *Hoeper*, supra because Wisconsin law provided no alternative and that New Jersey law does provide a choice. However, the choice described by the New Jersey court is not really a choice at all. If a married couple wants to file a New Jersey separate return, that couple must file a separate federal return. A separate federal return for married couples usually equates to higher taxes and lost opportunities for certain federal credits and deductions. For example, if a married couple files separately for federal purposes so they can file separately for New Jersey purposes, they will pay usually an overall higher income tax and not be able to claim the following for federal purposes:

1. Credit for Expenses for Household and Dependent Care Services Necessary for Gainful Employment per 26 U.S.C. § 21(e)(2).

2. Credit for the Elderly and the Permanently and Totally Disabled per 26 U.S.C. § 22(e)(1).

3. Earned Income Credit per 26 U.S.C. § 32(d).

4. Standard Deduction if one spouse itemizes deductions per 26 U.S.C. § 63(c)(6).

Does a choice exit? If this is considered a choice, could not the option of divorce or not getting married also be considered a choice? As a matter of fact, perhaps the cost of divorce for a married couple who both have income to become single individuals would be less expensive than the additional income taxes paid to the state of New Jersey. Since income tax returns are filed each year, the continuation of taxing married couples greater will add up from year to year.

"We have no doubt that, because of the fundamental conceptions which underlie our system, any attempt by a state to measure the tax on one person's property or income by reference to the property or income of another is contrary to due process of law." *Hoeper*, supra at 215. New Jersey measures one spouse's income by

reference to the other spouse. Even administrative convenience was not allowed by the state of Wisconsin as a justification for the tax scheme. "The claimed necessity cannot justify the otherwise unconstitutional exaction." *Hoeper*, supra at 217.

2. Directly in conflict with the decision of the New Jersey Supreme Court in the instant case is the decision of the case, *Eric Peden v. State of Kansas*, 93 CV 415 (Kansas District Court, 1994) on direct appeal to the Kansas Supreme Court, 94-73065-S. See Appendix D for *Peden*, supra. A Kansas taxpayer successfully challenged the Kansas tax rate structure that discriminates against unmarried individuals contrary to the Equal Protection clause of the 14th Amendment to the United States Constitution. The Kansas Court concluded that "None of the reasons, therefore, advanced by the State would seem to justify the gross disparity and discrimination that exists in the tax rate structure between single individuals and married individuals." See Appendix D at page 25a.

The state of Kansas has treated this decision seriously as evidenced by the Memo sent to the Kansas legislators by the Kansas Secretary of Revenue shortly after *Peden*, supra was decided. See Appendix E for the Memo.

Both the instant case in New Jersey and the case in Kansas deal with the question of marital status as a classification for income tax purposes that became an issue due to recent changes in each state's income tax laws. In Kansas, an unmarried individual was taxed at a greater rate. In New Jersey, two married individuals, the Petitioners were taxed at a greater rate.

As the Kansas case demonstrates, the time has come to take a close look at the structures of state income taxes that make the distinction between married and unmarried persons. One's ability to pay their taxes is not dependent on whether they have married or not. In today's society, how unusual is it for two persons to live in one household like a married couple but not actually be married?

For couples to just live together is not only accepted by local law, some local governments are adopting domestic partner laws to protect the unmarried significant other. Houses can be purchased as joint tenancy with right of survivorship by couples whether or not they are married. A parent of a child is held accountable for the care of their child to the other parent, whether they were ever married or not. Wives can now testify against their husbands and common law marriages do not exist in New Jersey.

As the differences between an unmarried couple and a married couple decrease as has been happening in the past few decades, the justification for the different income tax treatment of married and unmarried persons is eroding away. Does not the Equal Protection Clause of the U.S. Constitution become more and more offended as each law is passed and social custom changes to treat unmarried couples more and more like married couples? This is both offensive to married persons in New Jersey and unmarried persons in Kansas. Both Kansas and New Jersey have kept to their present

system to prevent tax revenue losses. However, as the situation in Kansas demonstrates, the courts can get involved and are probably the only way this discrimination will ever be corrected.

3. The income tax laws of New Jersey discriminate on the basis of marital status, but the New Jersey Law Against Discrimination has listed marital status as an illegal classification for practices of discrimination. The state of New Jersey has specifically stated at N.J.S.A. 10:5-3 that, "The Legislature finds and declares that practices of discrimination against any of its inhabitants, because of. . .marital status. . .are a matter of concern to the government of the State, and that such discrimination threatens not only the rights and proper privileges of the inhabitants of the State but menaces the institutions and foundation of a free democratic State. . ." The Legislature further declared its opposition to such practices ". . .in order that the economic prosperity and general welfare of the inhabitants of the State may be protected and ensured." Moreover, the "Legislature intends that such damages [compensatory and punitive] be available to all persons protected by this act and that this act shall be *liberally* construed in combination with other

protections available under the laws of this State" (emphasis added). The intent of the Legislature has been spelled out in the statute itself.

The courts of New Jersey have recognized the importance of New Jersey's Law Against Discrimination, supra. In *Evans v. Ross*, 57 N.J. Super. 223, 230 (1959), the Appellate court stated, "In construing the Law Against Discrimination courts must give prime consideration to the object of the Legislature and the evil it sought to remedy."

The Supreme Court of New Jersey has also given liberal construction as well in *Fraser v. Robin Dee Day Camp*, 44 N.J. 480, 486 (1965) and in *Levitt & Sons, Inc. v. Div. Against Discrimination, etc.*, 31 N.J. 514, at 524:

> In approaching the construction of the statute it is necessary to be mindful of the clear and positive policy of our State against discrimination as embodied in *N.J. Const., Art. I, par. 5*. Effectuation of that mandate calls for liberal interpretation of any legislative enactment designed to implement it.

Thus, the meaning of the statute should be expanded with liberal construction to meet cases that are clearly within the spirit of the law. How can the New Jersey Supreme Court not apply New Jersey's Law Against Discrimination, supra in its analysis of Equal Protection? The statute should be applied. The state of New Jersey should have at least given the discrimination in the instant case, a higher level of review than rational basis.

CONCLUSION

The present case offers an opportunity for this Court to limit the discrimination on marital status found in the income tax laws of New Jersey and to put notice to those states whose income tax laws discriminate on the basis of marital status.

Respectfully submitted,

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and

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Dated: January 9, 1995

APPENDIX A - JUDGMENT OF THE SUPREME COURT OF NEW JERSEY FILED OCTOBER 11, 1994

SUPREME COURT OF NEW JERSEY
C-177 September Term 1994

38,660

JAMES W. RINIER, et al.,
Plaintiffs-Petitioners,

v.

STATE OF NEW JERSEY,
Defendant-Respondent,

ON PETITION FOR CERTIFICATION

To the Appellate Division, Superior Court:

A petition for certification of the judgment in A-1871-92 having been submitted to this Court, and the Court having considered the same;

It is ORDERED that the petition for certification is denied, with costs.

WITNESS, the Honorable Robert N. Wilentz, Chief Justice, at Trenton, this 11th day of October, 1994.

s/ Stephen W. Townsend
CLERK OF THE SUPREME COURT

APPENDIX B - OPINION OF THE SUPERIOR COURT OF NEW JERSEY, APPELLATE DIVISION FILED MAY 4, 1994

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION

A-1871-92T3

JAMES WILLIAM RINIER and CARMELLA FORZIATI,
Plaintiffs-Appellants,

v.

STATE OF NEW JERSEY,
Defendant-Respondent.

Submitted March 16, 1994 - Decided May 4, 1994

Before Judges King, Havey and A.A. Rodriguez.

On appeal from a Final Judgment of the Tax Court of New Jersey.

James William Rinier, pro se, submitted a brief on behalf of appellants.

Deborah T. Poritz, Attorney General of New Jersey, attorney for respondent (Joseph L. Yannotti, Assistant Attorney General, of counsel; Margaret A. Holland, Deputy Attorney General, on the brief).

The opinion of the court was delivered by HAVEY, J.A.D.

Plaintiffs, husband and wife, filed a declaratory judgment action claiming that provisions of the New Jersey Gross Income Tax Act, N.J.S.A. 54A:1-1 to 54:10-12, violate their federal equal protection and due process rights by requiring them to file a joint state income-tax return if they file a joint federal return. The consequence of filing a joint state return is that plaintiffs' aggregate income is subject to a higher tax rate. The Tax Court judge, Judge Lario, granted summary judgment to the State, finding that the provisions of the statute at issue were reasonably related to a legitimate governmental purpose. We agree and affirm.

Under N.J.S.A. 54A:8-3.1c, married persons filing a joint federal tax return must also file a joint New Jersey return. Effective January 1, 1991 (L. 1990, c. 61, § 12), N.J.S.A. 54A:2-1a and b, provide for different tax rates applicable to "married individuals filing a joint return" (subsection a) and "married individuals filing separately" (subsection b). The tax is computed in accordance with the following tables:

a. For married individuals filing a joint return . . .

If the taxable income is:	The tax is:

Not over $ 20,000.00	2% of taxable income
Over $ 20,000.00 but not over $ 50,000.00	$ 400.00 plus 2.5% of the excess over $ 20,000.00
Over $ 50,000.00 but not over $ 70,000.00	$ 1,150.00 plus 3.5% of the excess over $ 50,000.00
Over $ 70,000.00 but not over $ 80,000.00	$ 1,850.00 plus 5.0% of the excess over $ 70,000.00
Over $ 80,000.00 but not over $ 150,000.00	$ 2,350.00 plus 6.5% of the excess over $ 80,000.00
Over $ 150,000.00	$ 6,900.00 plus 7.0% of the excess over $ 150,000.00

b. For married individuals filing separately, . . .

If the taxable income is:	The tax is:
Not over $ 20,000.00	2% of taxable income
Over $ 20,000.00 but not over $ 35,000.00	$ 400.00 plus 2.5% of the excess over $ 20,000.00
Over $ 35,000.00 but not over $ 40,000.00	$ 775.00 plus 5.0% of the excess over $ 35,000.00
Over $ 40,000.00 but not over $ 75,000.00	$ 1,025.00 plus 6.5% of the excess over $ 40,000.00
Over $ 75,000.00	$ 3,300.00 plus 7.0% of the excess over $ 75,000.00

Prior to January 1, 1991, the State utilized only one tax-rate schedule. See N.J.S.A. 54A:2-1 (L. 1976, c. 47).[1]

Plaintiffs produced joint federal and New Jersey state income-tax returns setting forth their gross income as $ 66,129. After taking all "proper deductions and exemptions," their New Jersey gross income tax liability under N.J.S.A. 54:2-1a was $ 946. If plaintiffs were allowed to use the tax rates set forth in N.J.S.A. 54A:2-1b for married persons filing separately, their tax liability would have been $ 848.[2]

Plaintiffs argue that N.J.S.A. 54A:2-1 and N.J.S.A. 54A:8-3.1c violate their federal due process and equal protection rights because, by compelling them to file a joint return, they are subject

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[1] N.J.S.A. 54A:2-1 was recently amended to reflect a five percent decrease in gross income-tax rates for taxable years 1994 and thereafter. (L. 1994, c. 2, eff. January 1, 1994). The decrease applies uniformly regardless of taxpayer's filing status and thus has no effect on plaintiffs' argument on appeal.

[2] Plaintiffs' tax returns are not part of the record and therefore the tax year is not disclosed.

to a greater tax liability than unmarried or married couples who both work but file separate federal returns. Plaintiffs label as unconstitutional any scheme which measures, for income-tax purposes, one spouse's income by reference to the other spouse's income.

Federal equal protection analysis employs different tiers of review. *Drew Assocs. of NJ, LP v. Travisano*, 122 N.J. 249, 258 (1991). When legislation regulates a fundamental right, or disparately treats a suspect class, it is subject to strict scrutiny. *Ibid.* See also, *State v. Bulu*, 234 N.J. Super. 331, 343 (App. Div. 1989). Legislation which regulates a semi-suspect classification or affects a fundamental right in an indirect manner is subject to intermediate scrutiny; it must be shown that the legislation serves an important governmental objective and is substantially related to the achievement of that objective. *Craig v. Boren*, 429 U.S. 190, 197, 97 S.Ct. 451, 456, 50 L.Ed.2d 397, 407 (1976), reh. denied, 429 U.S. 1124, 97 S.Ct. 1161, 51 L.Ed.2d 574 (1977); *Bulu*, 234 N.J.

Super. at 344; *In re L.M.*, 229 N.J. Super. 88, 94, 550 A.2d 1252 (App. Div. 1988), certif. denied, 114 N.J. 485 (1989).

In all other cases the rational-basis standard is applied, requiring only that there be some rational nexus between the state action and the legitimate state interest sought to be achieved. *Drew Assocs.*, 122 N.J. at 258; *New Jersey State Bar Ass'n v. Berman*, 259 N.J. Super. 137, 145, (App. Div. 1992). The rational-basis standard demands that the legislative act be "devoid of unreasonableness and arbitrariness and that means selected for fulfillment of policy bear a 'real and substantial relation' to that end[.]" *Drew Assocs.*, 122 N.J. at 259 (quoting *Katobimar Realty Co. v. Webster*, 20 N.J. 114, 123, 118 A.2d 824 (1955)). Stated differently, the question is whether there is any conceivable state of facts which would afford a rational basis for the classification. *McKenney v. Byrne*, 82 N.J. 304, 316, 412 A.2d 1041 (1980). The "equal protection safeguard is offended 'only if the classification rests on grounds wholly irrelevant to the achievement of the State's objective'". *New Jersey State Bar Ass'n*, 259 N.J. Super. at 146 (quoting *McGowan v. State*

of Maryland, 366 U.S. 420, 425, 81 S.Ct. 1101, 1105, 6 L.Ed.2d 393, 399 (1961)). Also, the rational-basis standard "is the functional equivalent of the due-process requirements of the fifth and fourteenth amendments." *Drew Assocs.*, 122 N.J. at 258. Thus, while the equal protection and due-process clauses protect against different evils, analysis under both clauses may overlap. Id. at 258-59.

Plaintiffs argue that the strict scrutiny test should be employed because married persons are a suspect class. We disagree. Government regulations affecting marriage are not subject to strict scrutiny simply because the right to marry is a fundamental right. *Zablocki v. Redhail*, 434 U.S. 374, 386-87, 98 S.Ct. 673, __, 54 L.Ed.2d 618, 631 (1978); *Califano v. Jobst*, 434 U.S. 47, 53-54, 98 S.Ct. 95, __, 54 L.Ed.2d 228, 235 (1977). The government may impose a reasonable regulation on marriages so long as the regulation does not significantly interfere with decisions to marry. *Zablocki*, 434 U.S. at 386-87, 98 S.Ct. at __, 54 L.Ed.2d at 631. Only where the regulation presents a "direct" obstacle to marriage

will the court apply a strict scrutiny standard. *Mapes v. United States*, 576 F.2d 896, 901 (Ct. Cl.), cert. denied, 439 U.S. 1046, 99 S. Ct. 722, 58 L.Ed.2d 705 (1978). See also, *Druker v. Commissioner of Internal Revenue*, 697 F.2d 46, 49-50 (2nd Cir. 1982), cert. denied, 461 U.S. 957, 103 S.Ct. 2429, 77 L.Ed.2d 1316 (1983).

Here, the challenged provisions of the New Jersey tax place "no direct legal obstacle in the path of persons desiring to get married[.]" *Zablocki*, 434 U.S. at 387, n.12, 98 S.Ct. at __ , 54 L.Ed.2d at 631. At most, the provisions impose an indirect burden suffered not from marrying, but "from marrying one in a particular income group." *Mapes*, 576 F.2d at 901. And, while that direct burden may, to some extent, affect the choice whether to marry, it leaves the ultimate choice to the individual. *Druker*, 697 F.2d at 50. We are, therefore, satisfied that the rational-basis, rather than the strict scrutiny standard, applies.[3]

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[3] We find irrelevant plaintiffs' argument that the Rules of Professional Conduct governing attorneys consider as "misconduct" a lawyer's discrimination

We agree with Judge Lario that the rational-basis test is satisfied here. The federal equal-protection clause does not require that government treat all persons identically; it requires that differences in treatment of persons similarly situated be justified by appropriate state interest. *Taxpayers Ass'n of Weymouth Tp. v. Weymouth Tp.*, 71 N.J. 249, 280-81, 80 N.J. 6, 364 A.2d 1016, republished as corrected, 80 N.J. 6 (1976), cert. denied, 430 U.S. 977, 97 S.Ct. 1672, 52 L.Ed.2d 373 (1977). Also, where taxation is concerned and equal protection is implicated, the states have a large leeway in making classifications and drawing lines. *Lehnhausen v. Lake Shore Auto Parts Co.*, 410 U.S. 356, 359, 93 S.Ct. 1001, 1003, 35 L.Ed.2d 351, 354-55, reh. denied, 411 U.S. 910, 93 S.Ct. 1523, 36 L.Ed.2d 200 (1973); *New Jersey State Bar Ass'n*, 259 N.J. Super. at 146.

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based on marital status. See R.P.C. 8.4(g). We also reject their assertion, made without reference to any statutory or common-law authority, that New Jersey's Law Against Discrimination, N.J.S.A. 10:5-1 to -42, elevates marital status to a suspect class.

The revenue from New Jersey's income tax is dedicated to "reducing or offsetting property taxes," N.J. Const. art. VIII, § 1, π 7, a legitimate governmental goal. *See Domenick v. Director, Div. of Tax.*, 176 N.J. Super. 121, 130, (App. Div. 1980). The legislative history of the 1990 amendment to N.J.S.A. 54A:2-1 establishes that the purpose of the two-rate schedules created by the amendment was to raise approximately $ 1.25 billion to "fund programs which provide permanent property tax reform." *Assembly Appropriations Committee Statement for Assembly Bills 3607 and 3609*, L. 1990, c. 61. The act upon which the amendment was a part was intended as a broad revision of the tax laws, aimed at providing "property tax relief to homeowners and residential tenants"; it combined changes to the homestead rebate program, increased the tax rates, and provided for "separate rate schedules designated by filing status, in order to make that tax more consistent with taxpayers' ability to pay." *Ibid.* Clearly, the changes, individually and collectively, are reasonably related to the State's goal of reducing property tax burdens.

The question is whether the requirement that joint state returns be filed when federal joint returns are filed has a rational nexus with the goal the State seeks to achieve. Stated differently, the question is whether there is any conceivable state of facts which would afford a rational basis for the classification. *McKenney*, 82 N.J. at 316.

The State argues that the higher tax rates imposed on some married couples as a result of filing joint returns may be justified in terms of the reduced total costs associated with married couples who typically share living expenses and thus have more disposable income.

While the State's assertion may have merit, it is not necessary that we endorse it in order to sustain the statutory scheme. We have held that "such factors as the ability to pay, degree of benefit . . . and *administrative convenience* may well" be legitimate factors in making classifications and drawing lines under a taxation statute. *New Jersey State Bar Ass'n*, 259 N.J. Super. at 147 (emphasis added). Here, the "administrative convenience" of having New

Jersey use the same filing status as they use when filing their federal tax returns would presumably increase uniformity in revenue-collecting procedures between the state and federal government. In fact, N.J.S.A. 54A:2-1 expressly states that, for income-tax purposes, New Jersey adopts the same measure of a "taxable year" as utilized by the federal government. Further, the State advises us that the IRS and New Jersey's Division of Taxation share auditing information. Thus, if taxpayers are required to use the same filing status for federal and state income taxes, the auditing process for both taxing agencies is more effective. In our view, this administrative convenience alone justifies the Legislature's classification by marital status.[4]

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[4] Plaintiffs filed a contemporaneous action in the United States District Court for the District of New Jersey challenging the "married tax penalty" under the Internal Revenue Code. In an unreported opinion, the District Court granted the government's motion for summary judgment dismissing the complaint. (92-1594) (August 21, 1992). The Third Circuit affirmed, and the Supreme Court has denied their petition for certiorari. *Rinier v. United States of America*, 995

The fact that there may be an adverse tax consequence to some married couples arising from the marital-status classification does not render the tax scheme irrational. In the area of economics, a state does not violate equal protection "merely because the classifications made by its laws are imperfect." *Dandridge v. Williams*, 397 U.S. 471, 485, 90 S.Ct. 1153, __, 25 L.Ed.2d 491, 501, reh'g denied, 398 U.S. 914, 90 S.Ct. 1684, 26 L.Ed.2d 80 (1970). So long as the law has a reasonable basis, it will not offend the federal constitution "simply because the classification 'is not made with mathematical nicety or because in practice it results in some inequality.'" Id. at 397 U.S. 485, 90 S.Ct. at __, 25 L.Ed.2d at 501-02 (quoting *Lindsley v. Natural Carbonic Gas Co.*, 220 U.S. 61, 78, 31 S.Ct. 337, , 55 L.Ed. 369, 377 (1911)). As the United States Supreme Court stated in *Madden v. Kentucky*, 309 U.S. 83, 88, 60 S.Ct. 406, 408, 84 L.Ed. 590, __ (1940):

> It has . . . been pointed out that in taxation, even more than in other fields, legislatures possess the greatest freedom in

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F.2d 218 (3d Cir.), cert. denied, __ U.S. __, 114 S.Ct. 306, 126 L.Ed.2d 254 (1993).

> classification. Since the members of a legislature necessarily enjoy a familiarity with local conditions which this Court cannot have, the presumption of constitutionality can be overcome only by the most explicit demonstration that a classification is a hostile and oppressive discrimination against particular persons and classes.

See also, *New Jersey State Bar Ass'n*, 259 N.J. Super. at 146-47; *New Jersey State League of Municipalities v. State of New Jersey*, 257 N.J. Super. 509, 518-20, 608 A.2d 965 (App. Div. 1992).

Consequently, the fact that a state's statutory classification may be "imperfect and imprecise" as applied to some married couples, does not justify its invalidation. *Mapes*, 576 F.2d at 903. There simply cannot be a "marriage-neutral tax system," and thus tax discrepancies will no doubt exist no matter how the rates are structured or classifications drawn. *Id.* at 904. The judiciary is not equipped, nor should it be inclined to tinker with taxpayer classification or rate-fixing decisions, reposed exclusively in the legislative branch. *Druker*, 697 F.2d at 50. For these reasons, other state courts have sustained tax provisions which resulted in enhanced tax liability to married couples. See *Klein v. Iowa Dep't of Revenue & Finance*, 451 N.W.2d 837, 842-43 (Iowa) (Iowa

statute requiring spouses filing separate state returns to use standard deductions if either chooses to do so does not violate equal protection), cert. denied, 498 U.S. 852, 111 S.Ct. 145, 112 L.Ed.2d 111 (1990); *Roberts v. State Tax Comm'n*, 277 N.E.2d 499, 502-03 (Mass. 1972) (state statute which required married taxpayers to file joint return in order to obtain refund did not deprive taxpayer of equal protection even though statute permitted divorced or legally separated person to file return individually and obtain refund).

Plaintiffs cite *Hoeper v. Tax Comm'n of Wisconsin*, 284 U.S. 206, 52 S.Ct. 120, 76 L.Ed. 248 (1931), for the proposition that a two tax-rate system which effectively measures one spouse's income by reference to the other spouse is a violation of federal due process and equal protection. In *Hoeper*, a married taxpayer challenged a Wisconsin law which required that a spouse's separate income be aggregated for income-tax purposes. 284 U.S. at 212-13, 52 S.Ct. at 121, 76 L.Ed. at 249-50. The combined incomes were taxed at a higher rate than the rate applicable to the spouses' income were they to file separately. *Ibid.* In striking down the law, a majority of the

Court stated that "any attempt by a state to measure the tax on one person's property or income by reference to the property or income of another is contrary to due process of law." 284 U.S. at 215, 52 S.Ct. at 122, 76 L.Ed. at 251. The Court noted its particular disapproval of Wisconsin's practice of taxing "as a joint income that which under [Wisconsin's] law is owned separately" in order to secure a higher income-tax revenue. 284 U.S. at 216, 52 S.Ct. at 122, 76 L.Ed. at 251.

The Court of Claims in *Mapes* questioned the continued viability of the majority opinion in *Hoeper*. See 576 F.2d at 902. In any event, *Hoeper* may be distinguished. The Wisconsin law in *Hoeper* provided no alternative to that of taxation combined income; in the New Jersey statutory scheme married taxpayers have a choice. If they choose to file separately for purposes of their federal tax return, they may file separately for state income-tax purposes and thus avail themselves of the potentially lower state tax rates. N.J.S.A. 54A:2-1b. However, if they choose to file a joint federal return, they presumably will receive some federal tax benefit, but

must file a joint state return. The point is that it is their choice to make. We are entirely satisfied that under the rational-basis analysis, plaintiffs have failed to "refute all possible rational bases for the differing treatment" among classes under the legislation. *New Jersey State League of Municipalities*, 257 N.J. Super. at 518. We therefore uphold the tax provisions at issue.

Affirmed.

APPENDIX C - OPINION AND ORDER GRANTING DEFENDANT'S CROSS MOTION FOR SUMMARY JUDGMENT OF THE NEW JERSEY TAX COURT FILED OCTOBER 23, 1992

TAX COURT OF NEW JERSEY
CAMDEN COUNTY

009672-92

JAMES W. RINIER AND CARMELLA FORZIATI,
PLAINTIFFS

VS

STATE OF NEW JERSEY
DEFENDANT

OPINION AND ORDER GRANTING DEFENDANT'S CROSS MOTION FOR SUMMARY JUDGMENT
FROM THE
TRANSCRIPT OF MOTIONS OF SUMMARY JUDGMENT

PLACE: TAX COURT OF N.J.
Hall of Justice
Camden, N.J.

DATE: October 23, 1992

BEFORE:

THE HONORABLE ANTHONY M. LARIO, J.T.C.

Lois M. Baker
Transcriber
402 N. 48th St.
Pennsauken, NJ

From Page 40 of Transcript

THE COURT: Alright, the facts in this case are not in dispute. Therefore, summary judgment is proper. I find that the Statute of the State of New Jersey in reference to the Gross Income Tax Act does not in any way discourage or penalize marriage nor was that the intent of the legislature. Neither was it the intent nor is it the effect. I further find that plaintiff has failed to establish that the legislature's determination to establish separate tax rate schedules and to require married persons to file their New Jersey gross income tax returns according to how they file their Federal income tax returns has no basis. I find specifically that the legislative purpose behind the Gross Income Tax Statutory provision is legitimate and I further find that the gross income tax provision are rationally related to the accomplishment of a legitimate governmental purpose. For the reasons set forth in the Director's brief which I incorporate in my findings and conclusions, no sense repeating them, I find that the Hoper case is not on point and is not in any way controlling. I find the plaintiff has failed to establish that the two sections of the

Act, complaint filed, are unconstitutional, failed to establish that they are unconstitutional. According, a judgment will be entered, summary judgment will be entered, granted to the defendant on its cross motion.

APPENDIX D - OPINION AND ORDER GRANTING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT OF THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS
FILED SEPTEMBER 7, 1994

DISTRICT COURT OF SHAWNEE COUNTY
KANSAS
DIVISION ELEVEN

93 CV 415

ERIC PEDEN,

Plaintiff,

vs.

STATE OF KANSAS, et al.

Defendants.

MEMORANDUM OF DECISION

THIS MATTER COMES on before the Court on the Motion of both parties for Summary Judgment in their favor. It is conceded that this is a matter that should be disposed of on the legal issues by summary judgment in favor of the whichever party should legally prevail. There is no substantial dispute about the facts of the case to the effect that the Plaintiff is a single taxpayer and will be

responsible for payment of 1993 taxes as such. The Statement of the Fact #4 by the Plaintiff is as follows:

> "For the calendar years 1988, 1989, 1990, 1991 and 1992, Plaintiff paid income tax to the State of Kansas at a rate that exceeded the highest income tax rate that applied to taxpayers filing under the status of 'married filing joint'. For the calendar year 1993 Plaintiff will be required to pay by April 15th, 1994, income tax to the State of Kansas at a rate that will exceed the highest income tax rate that will apply to taxpayers filing under the status of 'married filing joint.'"

The State concedes these facts but makes some additional statements of fact in its response to Plaintiff's motion.

Both parties concede that the single issue before the Court for determination is whether it is permissible for the State of Kansas to tax unmarried individuals at income tax rates which exceed the highest rates charged to married individuals. The Plaintiff alleges that this is a unique constitutional issue in that the Kansas tax rate structure discriminates against unmarried individuals contrary to the Equal Protection clause of the 14th Amendment of the United States Constitution, and Article 11, Section 2 of the Kansas Constitution. The Defendants, on the other hand, urge that the

discrimination, if any exists, is permissible by reason of the great latitude that courts allow Legislatures and their Administrative agencies in formulating a tax structure. The State indeed concedes that the tax rates complained of by the Plaintiff are discriminatory as between a single taxpayer and a married couple taxpayers claiming joint return status. Plaintiff asserts that this discriminatory distinction has no rational basis and therefore must be condemned as unconstitutional. Plaintiff's examples do demonstrate that rates of tax charged single taxpayers are higher and remain higher in the upper brackets than married taxpayers, and this disparity is never corrected. Again, both Plaintiff and Defendant are in agreement that the issue must be resolved by application of the two-pronged rational basis test that is (1) whether there is a legislative purpose for the classification, and (2) whether the classification rationally furthers that legislative purpose. There has been no rational basis for the distinction articulated by the Kansas Legislature, the Kansas Courts, or the executive agencies administering the Kansas tax law. In the Court's view the

weakness of the Defendant's attempt to rationalize this disparity is exhibited by the lengths to which the Defendant goes to postulate some reasonable explanation for the obvious discrimination. Even recognizing that the Defendant State is allowed a great deal of latitude, the Court finds no rational basis for the discrimination. The fact that supposedly married couples have a greater economic burden is highly speculative and subject to a great deal of question and uncertainty. That the public policy of the State of Kansas promotes marriage through its tax structure is almost fanciful when analytically examined. The same can be said of the proposition that married individuals are less likely to relocate and will remain a stable economic unit for the State for longer periods of time. This leaves "ease of administration" and again this Court finds that to be speculative and conjectural. None of the reasons, therefore, advanced by the State would seem to justify the gross disparity and discrimination that exists in the tax rate structure between single individuals and married individuals. Therefore the Court adopts the Plaintiff's theories and rationale and declares that the tax rate

structure attacked is vulnerable on a constitutional theory and should be struck down.

Plaintiff correctly observes that historically splitting mechanisms and their variations have been approved by the Federal Courts as a method of legitimately "discriminating" in favor of married and against single taxpayers. Also approved were various adjustments to accommodate taxpayers in "non-community property" states. *Plaintiff Memorandum pp 9-12.* This all occurred in the federal system where there is a comprehensive legislative history of dealing with these issues. There is a total lack of legislative history or indeed any real analytical treatment of this problem of discrimination by the State of Kansas. There can be no disagreement that there are discriminatorily higher rates of tax paid by single Kansas taxpayers and there is no rational justification for such.

Judgment is therefore granted on the Plaintiff's Motion for Summary Judgment and the Defendant's Motion for Summary Judgment is denied.

s/ Matthew J. Dowd
MATTHEW J. DOWD
DISTRICT JUDGE
DIVISION ELEVEN

DATE: September 7, 1994

APPENDIX E - KANSAS SECRETARY OF REVENUE'S SEPTEMBER 27 MEMO REGARDING CONSTITUTIONALITY OF STATE INCOME TAX DATED SEPTEMBER 27, 1994

TO: All Legislators

FROM: Nancy Parrish, Secretary of Revenue

DATE: September 27, 1994

RE: Constitutionality of Kansas Income Tax

I am enclosing a copy of a District Court decision that has the potential of liability greater than the military retiree refund case. On Wednesday, September 7, 1994 District Court Judge Matthew J. Dowd ruled that the Kansas income tax rate structure (K.S.A. 79-32, 100 from 1988 to the present) is unconstitutional because it favors married individuals filing joint returns over all other individual filers contrary to the Equal Protection clause of the 14th Amendment of the United States Constitution, and Article 11, Section 2 of the Kansas Constitution. Unlike the military retirement refund case, the Court in this case has denied plaintiff's motion to certify this case as a class action.

Judge Dowd ruled that single filers are subjected to income tax rates that are higher than the highest rates applicable to married individuals filing jointly. The decision is being analyzed by the Kansas Department of Revenue to determine the potential liability. Estimates of the POTENTIAL refund liability are still very rough but if the ruling means that the top two rates for single filers can't be higher than the top rate for married individuals filing jointly, then the TAX liability (not including interest) is $16 million per year or $48 million dollars for the three open tax years. If the ruling is that the single filer rates for each bracket must be identical to the brackets for married individuals, then the tax refund liability is $50 million per year or $150 million for the three year period. Based on the Department's interpretation of the Court ruling, we believe that the estimated tax amount would be $48 million plus interest.

The Department will appeal the District Court decision to the Supreme Court. Under state law whenever a District Court declares a state statue unconstitutional, it can be appealed directly to the Supreme Court. It is unclear when the Supreme Court would

hear the case. If the District Court ruling stands, the state will be enjoined from assessing taxes in the future on single filers at a rate in excess of the highest rate for married individuals filing jointly.

Prior to 1988, Kansas income tax rates for joint filers and single filers were the same although the brackets were different. At that time, married couples filing jointly paid about 74% of the total amount of Kansas income taxes collected while individuals filing singly paid about 26%. When changes were made to the income tax statutes in 1988, the state tried to retain the same proportional burden between married individuals filing jointly and single filers. This was accomplished through differential rates for married individuals filing jointly and all others. When the income tax statutes were changed in 1992, the differential in rates between married joint filers and other filers increased.

Although no court has addressed the differential between married joint filers and single filer RATES, the United States Tax Court and the Second Circuit Court of Appeals upheld different tax brackets for married individuals filing jointly and single filers.

During the 1995 legislative session, the legislature should consider the eliminating the differential in rates between married individuals filing jointly and single filers. There are several options that should be reviewed.

Please feel free to give me a call if you have any questions or if you need additional information.

Supreme Court, U.S.
FILED
FEB 17 1995
OFFICE OF THE CLERK

(2)

No. 94-1203

In the

Supreme Court of the United States

October Term, 1994

JAMES WILLIAM RINIER AND CARMELLA FORZIATI,
Petitioners,

v.

STATE OF NEW JERSEY,
Respondent.

On Petition for a Writ of Certiorari
to the Supreme Court of New Jersey

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Do two New Jersey income tax statutes which establish separate tax rates for individuals and married persons and require married persons to file their income tax returns according to how they filed their federal income tax returns, violate federal equal protection and due process guarantees?

TABLE OF CONTENTS

PAGE

QUESTION PRESENTED i

TABLE OF CONTENTS ii

TABLE OF AUTHORITIES iv

COUNTERSTATEMENT OF THE CASE 1

I. Statutory Background 2

II. History of the Case 3

SUMMARY OF THE ARGUMENT 6

ARGUMENT:

THE PETITION FOR A WRIT OF CERTIORARI SHOULD BE DENIED BECAUSE N.J.S.A. 54A:2-1 AND N.J.S.A. 54A:8-3.1 DO NOT VIOLATE THE FEDERAL EQUAL PROTECTION AND DUE PROCESS GUARANTEES SINCE THE TAX STATUTES ARE RATIONALLY RELATED TO LEGITIMATE STATE PURPOSES 7

A. The New Jersey Courts Correctly Applied a Rational Basis Test to Determine the Constitutionality of the Gross Income Tax Statutes 8

B. The New Jersey Courts Correctly Interpreted the Decision in Hoeper 9

C. The Kansas County District Court's Decision in Peden v. State Does Not Conflict With the New Jersey Courts' Decisions 11

D. The New Jersey Law Against Discrimination is Irrelevant to An Analysis of Whether Gross Income Tax Statutes are Constitutional 14

CONCLUSION 16

TABLE OF AUTHORITIES

CASES CITED

Califano v. Jobst, 434 U.S. 47 (1977) 8, 14

Hoeper v. Tax Commission of Wisconsin, 284 U.S. 201 (1931) 6, 7, 9, 10

Kellems v. Comm'r, 58 T.C. 556 (1972), aff'd 474 F.2d 1399 (2d Cir. 1973) 12

Klein v. Iowa Dep't of Revenue & Finance, 451 N.W.2d 837, 842-43 (Iowa 1990), cert. denied, 498 U.S. 852 (1990) 13

Mapes v. United States, 576 F.2d 896 (Ct. Clms. 1978) 8, 14

Peden v. State of Kansas, 93 CV 415 (District Court of Shawnee County 1994) 6, 7, 11, 12, 14

Rinier v. United States of America, Civil Action No. 92-1594 (D.N.J. 8/21/92), aff'd, 995 F.2d 218 (3d Cir.), cert. denied, ___ U.S. ___, 114 S.Ct. 306, rehearing denied ___ U.S. ___, 114 S.Ct. 623 (1993) 2

Roberts v. State Tax Comm'n, 277 N.E.2d 499 (Mass. 1972) 13

Sowders v. Oklahoma Tax Comm'n., 552 P.2d 698 (Okla. 1976) 13

United States v. Oregon, 366 U.S. 643 (1961) 6, 11

Zablocki v. Redhail, 434 U.S. 374 (1978) 8, 14

STATUTES CITED

Kansas Stat Ann §79-32,110 (1993) 12

N.J. Stat. Ann.

N.J.S.A. 10:5-1 to 42 7

N.J.S.A. 54:8-3.1 3

N.J.S.A. 54A:1-1 et seq. 2

N.J.S.A. 54A:2-1 . . . . . 3, 4, 7-9, 11

N.J.S.A. 54A:8-3.1(b) 2

LAW CITED

1990 N.J. Laws c. 61, §12 3

COURT RULE CITED

Sup. Ct. R. 10.1(b) 6, 11, 14

MISCELLANEOUS

Assembly Appropriations Committee Statement
for Assembly Bills 3607 and 3609 3

No. 94-1203

In the

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October Term, 1994

JAMES WILLIAM RINIER AND CARMELLA FORZIATI,
Petitioners,

v.

STATE OF NEW JERSEY,
Respondent.

On Petition for a Writ of Certiorari
to the Supreme Court of New Jersey

BRIEF IN OPPOSITION

COUNTERSTATEMENT OF THE CASE

Petitioners seek a writ of certiorari to challenge a determination of the New Jersey Supreme Court denying their petition for certification and affirming the New Jersey Appellate Division's decision.

Specifically, petitioners contend that establishing separate tax rate tables based on taxpayers' filing status and requiring married individuals to file their Gross Income Tax ("GIT") returns depending on how they filed their federal income tax returns violate their constitutional guarantees of equal protection and due process. The Appellate Division of New Jersey's Superior Court and the Tax Court correctly rejected petitioners' argument and applied a rational basis test to uphold the constitutionality of the two New Jersey

GIT statutory provisions. The courts found that the GIT statutes are legitimate economic statutes and that administrative convenience alone supports finding that the GIT statutes are constitutional. The New Jersey Supreme Court chose not to hear an appeal from the Appellate Division's judgment.

Notably, this Court refused to consider a similar challenge by petitioner to the Internal Revenue Code's income tax rates in Rinier v. United States of America, Civil Action No. 92-1594 (D.N.J. 8/21/92), aff'd, 995 F.2d 218 (3d Cir.), cert. denied, ___ U.S. ___, 114 S.Ct. 306, rehearing denied ___ U.S. ___, 114 S.Ct. 623 (1993). There plaintiffs argued that since the Internal Revenue Code taxes married and unmarried persons at different rates, creating in effect a marriage tax penalty, the different rates violate the Due Process and Equal Protection Clauses of the Fourteenth Amendment. The United States District Court concluded that the so-called marriage tax penalty does not violate plaintiffs' rights under the Fourteenth Amendment. In reaching its decision, the federal court reasoned that "[w]hile plaintiff makes several reasonable arguments on policy and sociological grounds, ... they have little legal bearing on this issue" (slip op. at p. 2). The Congress is free to enact economic statutes to raise revenue for the government. New Jersey's GIT statutes are constitutional as well.

I. Statutory Background

In 1976, the New Jersey Legislature enacted the New Jersey GIT Act, N.J. Stat. Ann. §54A:1-1 et. seq. (West 1986) ("N.J.S.A."), to raise revenue for property tax relief. The Legislature provided in N.J.S.A. 54A:8-3.1(b) that married persons must file their GIT return according to how they filed their federal return. Specifically, if they filed a joint federal income tax return, they would have to file a

joint GIT return and if they filed a separate federal income tax return they would have to file a separate GIT return.

In 1982 the Legislature enacted a progressive tax rate scheme. The tax rates ranging from 2% to 3.5% on gross income applied to all taxpayers regardless of their filing status. In 1990 the Legislature amended N.J.S.A. 54A:2-1. See 1990 N.J. Laws c. 61, §12, effective as of January 1, 1991. The amendment increased the existing GIT rates and established tax rate tables with separate rate schedules designated by filing status. The Legislature enacted the amendment to "make that tax more consistent with taxpayers' ability to pay." [Assembly Appropriations Committee Statement for Assembly Bills 3607 and 3609].[1]

II. History of the Case

Petitioners, a married couple, chose to file a joint federal personal income tax return. Accordingly, under N.J.S.A. 54:8-3.1 they filed a joint New Jersey GIT return.

On April 14, 1992, petitioners filed a complaint against the State of New Jersey challenging the constitutionality of N.J.S.A. 54A:2-1 and N.J.S.A. 54A:8-3.1. On July 10, 1992, the Law Division of the Superior Court granted the State's motion to transfer the case from the Law Division to the Tax Court. On August 14, 1992, petitioners moved before the Tax Court for a declaratory judgment that the GIT statutes in issue violated the due process and equal protection clauses of the United States Constitution. The State filed a cross-motion for summary judgment.

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[1] Recently, the Legislature amended N.J.S.A. 54A:2-1 to reflect a five per cent decrease in GIT rates for tax years 1994 and after. Since the decrease applies uniformly, the Appellate Division correctly noted that the amendment has no effect on petitioners' case.

On October 23, 1992, ruling in the State's favor, the Tax Court found that petitioner[s] have "failed to establish that they [two GIT statutes in issue] are unconstitutional". The Tax Court applied a rational basis test to determine the constitutionality of the GIT statutes. (Pa[2]21) First, the Tax Court held that the legislative purpose behind the GIT statutory provisions was legitimate (Pa20). Second, the Tax Court held that the GIT provisions were rationally related to the accomplishment of a legitimate governmental purpose (Pa20). The Tax Court reasoned that N.J.S.A. 54A:2-1 and N.J.S.A. 54A:8-3.1 do "not in any way discourage or penalize marriage nor was that the intent of the Legislature" (Pa20), and upheld the GIT statutes.

On November 30, 1992, plaintiffs-petitioners filed a Notice of Appeal from the Tax Court's Order dated October 30, 1990, upholding the statutory provisions.

In a comprehensive and well reasoned opinion dated May 4, 1994, the Appellate Division upheld the constitutionality of the New Jersey GIT statutes. The Appellate Division rejected petitioners' argument that married persons are a suspect class entitling them to the application of strict scrutiny to analyze the tax statutes. The Appellate Division correctly found that "[g]overnment regulations affecting marriage are not subject to strict scrutiny simply because the right to marry is a fundamental right", [citation omitted] (Pa8). The GIT statutes do not directly burden a couple's decision to marry.

The Appellate Division also held that the correct standard of review for the tax statutes in issue was a rational basis standard, requiring only that there be some rational nexus between the state action and the legitimate state interest sought to be achieved. The Appellate Division then

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[2] "Pa" refers to the appendix petitioners filed with their petition for writ of certiorari.

defined the issue as "whether the requirement that joint state returns be filed when federal joint returns are filed has a rational nexus with the goal the State seeks to achieve" (Pa12). In other words, "whether there is any conceivable state of facts which would afford a rational basis for the classification." Ibid.

Since the GIT Act was enacted to raise $1.25 billion to fund programs for permanent property tax reform, the Appellate Division found that its purpose is legitimate. Furthermore, the Appellate Division found that having New Jersey taxpayers use the same filing status as they use when filing their federal tax returns was justified because it increased uniformity in revenue-collecting procedures between the state and federal government (Pa12-13). In fact, the Appellate Division emphasized that "administrative convenience alone justifies the [statute]" (Pa13). The Appellate Division correctly recognized that the "fact that there may be an adverse tax consequence to some married couples arising from the marital-status classification does not render the tax scheme irrational." "So long as the law has a reasonable basis, it will not offend the...Constitution" (Pa13). The Appellate Division concluded by noting that "[w]e are entirely satisfied that under the rational-basis analysis, plaintiffs have failed to 'refute all possible rational bases for the differing treatment' among classes under the legislation," [citation omitted] (Pa18).

Petitioners filed a Petition for Certification to the New Jersey Supreme Court. On October 11, 1994 the New Jersey Supreme Court denied the petition.

SUMMARY OF THE ARGUMENT

The New Jersey courts correctly applied a rational basis test to uphold the constitutionality of the gross income tax statutes. The established caselaw overwhelmingly proves that the New Jersey tax statutes do not run afoul of the due process and equal protection standards. The New Jersey courts properly interpreted the decision in Hoeper v. Tax Commission of Wisconsin, 284 U.S. 201 (1931). Additionally, the New Jersey courts' decisions do not conflict with a Kansas County District decision in Peden v. State of Kansas, 93 CV 415 (District Court of Shawnee County 1994). The case is distinguishable and, furthermore, even if on point, a conflict between a state trial court and a state supreme court of last resort is not the type of conflict requiring the United States Supreme Court to decide whether to review a case. The conflict must be between two state courts of final jurisdiction, before this Court will even consider whether to grant certiorari. Sup. Ct. R. 10.1(b), United States v. Oregon, 366 U.S. 643, 645 (1961). Finally, the New Jersey Law Against Discrimination is irrelevant to an analysis of whether gross income tax statutes are constitutional.

ARGUMENT

THE PETITION FOR A WRIT OF CERTIORARI SHOULD BE DENIED BECAUSE N.J.S.A. 54A:2-1 AND N.J.S.A. 54A:8-3.1 DO NOT VIOLATE THE FEDERAL EQUAL PROTECTION AND DUE PROCESS GUARANTEES SINCE THE TAX STATUTES ARE RATIONALLY RELATED TO LEGITIMATE STATE PURPOSES.

Petitioners maintain that the petition for writ of certiorari should be granted because the lower courts erred by applying a rational basis test instead of a strict scrutiny test in analyzing whether the GIT statutes in issue are constitutional. Specifically, petitioners claim that the lower courts misinterpreted the decision in Hoeper v. Tax Commission of Wisconsin, 284 U.S. 206 (1931), and that the decision in Peden v. Kansas, 93 CV 415 (Kansas District Court 1994), conflicts with New Jersey courts' rulings. Petitioners also contend that the New Jersey Law Against Discrimination, ("LAD"), N.J.S.A. 10:5-1 to 42, requires the courts to apply a strict scrutiny test, not a rational basis test, to taxing statutes that make any use whatsoever of marital status. Petitioners are wrong on all three claims.

As will be shown below, the petition for writ of certiorari should be denied. The fatal flaw in petitioners' argument is that they fail to understand that while the right to contract marriage is a fundamental right, all state regulations concerning marriage are not subject to strict scrutiny merely because the statutory provision in some way distinguishes based on the incident of marriage. This is particularly so in the context of economic regulation. Hence, the New Jersey courts correctly applied a rational basis test to determine if the GIT statutes were constitutional.

A. The New Jersey Courts Correctly Applied a Rational Basis Test to Determine the Constitutionality of the Gross Income Tax Statutes.

Petitioners contend that a strict scrutiny test should be used because married persons are a suspect class. Petitioners' argument is entirely without merit.

The New Jersey courts properly recognized that the key in determining whether a statute impermissibly infringes on the right to marry is whether the statute directly interferes with the decision of the two persons deciding whether to marry. See Zablocki v. Redhail, 434 U.S. 374, 386 (1978) (A reasonable governmental regulation that does not significantly interfere with decisions to marry may legitimately be imposed); Califano v. Jobst, 434 U.S. 47, 53-54 (1977) (Court applied the rationality test to uphold the use of marital status to determine eligibility for social security disability benefits); Mapes v. United States, 576 F.2d 896, 901 (Ct. Clms. 1978), cert. denied, 439 U.S. 1046 (1978) (The obstacle to marriage must be a direct one, i.e., one that operates to preclude marriage entirely for a certain class of people). Therefore, since the GIT statutory provisions in issue do not infringe on the right to marry, the lower courts properly found that the correct test to determine whether the statutes were constitutional is the rational basis test.

Under the rational basis test, the crucial questions in evaluating petitioners' equal protection challenge are whether the GIT statutory provisions have a legitimate purpose and whether there is any conceivable set of facts which affords a rational basis for the classification. The legislative purpose of the GIT Act is set forth in the legislative history of the original GIT Act enacted in 1976. The legislative history of N.J.S.A. 54A:2-1 establishes that the purpose of the GIT is to raise revenue for property tax

relief. To raise the revenue, the Legislature established separate tax rates consistent with taxpayers' ability to pay. The Appellate Division found that raising revenue for property tax relief, and thereby alleviating the tax burden for homeowners, is a legitimate, indeed vital, governmental purpose.

Since the purpose behind the GIT statutes is legitimate, all that need be shown to sustain the requirement that married persons file their GIT returns as they filed their federal returns is a conceivable set of facts that may have motivated the Legislature. The Appellate Division found that in this case "administrative convenience [for the Division of Taxation] alone justifies the Legislature's classification by marital status" (Pa13). This requirement is further valid because it increases uniformity in revenue collecting procedures between the state and federal government and permits using the same auditing process for both taxing agencies. (Pa13).

Moreover, New Jersey adopts the same measure of a taxable year used by the federal government under N.J.S.A. 54A:2-1. These examples easily overcome petitioners' contention that administrative convenience is not a justification for the filing requirement.

In sum, the GIT statutory provisions and the classifications they contain are rationally related to the accomplishment of a legitimate governmental purpose and were properly upheld by the Appellate Division. No further review is warranted.

B. The New Jersey Courts Correctly Interpreted the Decision in Hoeper.

Petitioners claim that the lower courts misinterpreted the decision in Hoeper v. Tax Commission of Wisconsin, supra, 284 U.S. 206. Contrary to petitioners' contention,

the New Jersey courts correctly analyzed Hoeper and found it distinguishable.

The Hoeper case concerns taxpayers' constitutional challenge to a Wisconsin tax law requiring aggregation of spouses' separate incomes. The combined incomes were then taxed at rates higher than would apply if the taxpayers were single and filed separately. Another section of the Wisconsin statute allowed the filing of separate returns, but the tax was still computed on the joint income.

On appeal to the United States Supreme Court, a married taxpayer claimed that the Wisconsin tax system attributing his wife's income to him was arbitrary and discriminatory. After reviewing Wisconsin's laws on the status of a married woman's right to property, providing that a husband had no right to his wife's income, a majority of the Supreme Court held that since the Wisconsin tax law measured, "the tax on one person's property or income by reference to the property or income of another," it violated the principles of due process. Id. 284 U.S. at 215.

The New Jersey courts properly found that the New Jersey GIT Act contains no such compulsory income aggregation provision. The Appellate Court distinguished the Hoeper case by finding that "[t]he Wisconsin law in Hoeper provided no alternative to that of taxing combined income; in the New Jersey statutory scheme married taxpayers have a choice" (Pa17). Hence, married taxpayers may choose to file separate returns and thus avoid "attribution" of their income to the income of their spouse. Any aggregation of the two spouses' income on a federal and New Jersey gross income tax joint return is a voluntary matter. The Appellate Division concluded by emphasizing that "[t]he point is that it is their choice to make" (Pa18).

Petitioners suggest that filing a joint federal return is not voluntary because generally couples will pay a greater

tax if they file a separate federal return. The Appellate Division correctly ruled that "[t]he fact that there may be an adverse tax consequence to some married couples arising from marital-status classification does not render the tax scheme irrational" (Pa14).

Petitioners' complaint is with the Legislature, not the Judiciary. If the Legislature chooses to amend either N.J.S.A. 54A:2-1 or N.J.S.A. 54A:8-3.1 it can do so. But the laws as presently written do not violate the United States Constitution.

C. The Kansas County District Court's Decision in Peden v. State Does Not Conflict With the New Jersey Courts' Decisions.

Petitioners suggest that the decision in the Kansas County District Court, Peden v. State, conflicts with the New Jersey Appellate Division's decision. This argument is also without merit.

In determining whether to exercise its discretionary certiorari jurisdiction, the Court considers whether a conflict exists between decisions of the highest courts of two or more states on a federal question. Sup. Ct. R. 10.1(b). Here, the alleged conflict is between a Kansas lower court and the New Jersey Appellate Division. Clearly, this is not the type of conflict requiring this Court to decide whether to grant certiorari under Sup. Ct. R.10.1(b). The conflict must be between two state courts of final jurisdiction. United States v. Oregon, 366 U.S. 643, 645 (1961).

Even if the Peden case were from another state court with final jurisdiction, the Peden decision is distinguishable from the decision in this matter because the Kansas gross income tax scheme has different top rates for individuals and married individuals.

In Peden, the issue was whether Kansas can tax individuals at income tax rates exceeding the highest rates for married individuals. In Kansas individual taxpayers are subject to rates ranging from 4.4% to 7.75% and married individuals are subject to rates ranging from 3.5% to 6.45%, Kansas Stat. Ann. §79-32,110 (1993). Thus, married individuals are never subject to a higher rate than 6.45% while individuals are taxed at a high rate of 7.75%. The Kansas district court concluded that the Kansas taxing scheme is unconstitutional because it requires unmarried individuals to pay income tax at a rate exceeding the top rate for married individuals.

In stark contrast, under the New Jersey statutes, the top individual rate is not higher than the highest rate applicable to married individuals. New Jersey has the same range of tax rates, (2% to 7%) for all taxpayers whether single or married. Under New Jersey GIT statutes, married individuals are taxed at a higher rate because of their aggregate income not because one tax structure is higher than the other. The Appellate Division correctly noted that the consequence of filing a joint state tax return is that taxpayers' aggregate income will be subject to a higher tax rate. The New Jersey GIT Act has the same range of tax rates, but different tax classifications, individuals and married.

Courts have consistently upheld the classification between married and single persons for tax purposes. For example, in Kellems v. Comm'r, 58 T.C. 556 (1972), aff'd 474 F.2d 1399 (2d Cir. 1973), the taxpayer argued that the higher income tax rates applicable to single persons compared to married individuals was an unconstitutional classification and, among other problems, violated the Equal Protection Clause of the Fourteenth Amendment. The Second Circuit and United States Tax Court found a rational basis for the distinction between married and single persons

in applying the rates of taxation. The Tax Court noted that "Congress was within the bounds of its constitutional role since it is conceivable Congress believed that married persons generally have greater financial burdens than single persons." 58 T.C. at 559. The court reasoned that the recognition of such greater financial burdens is consistent with taxation based on the ability to pay which has long been an important objective of the income tax scheme. Id.

Similarly, the Oklahoma Supreme Court has held that a disparity between the tax rates applied to married individuals filing jointly and other taxpayers does not violate the Equal Protection Clause. Sowders v. Oklahoma Tax Comm'n., 552 P.2d 698 (Okla. 1976). In Sowders, taxpayer asserted that the classification based upon marital status violated the Fourteenth Amendment of the United States Constitution. The court phrased the single issue before it as whether the Oklahoma Legislature had a rational basis for the distinction drawn between married and single persons for purposes of the applicable rates of taxation. Id. at 699. The court found that there was no equal protection problem with the disparity in tax rates because a rational basis exists for the disparity. The rational basis was the classification based upon the different financial burdens between married individuals and single filers.

Furthermore, the Appellate Division also correctly found that other state courts have sustained tax provisions which "resulted in enhanced tax liability to married couples" (Pa15). See Klein v. Iowa Dep't of Revenue & Finance, 451 N.W.2d 837, 842-43 (Iowa 1990), cert. denied, 498 U.S. 852 (1990); (Iowa statute requiring spouses filing separate state returns to use standard deductions if either chooses to do so does not violate equal protection); Roberts v. State Tax Comm'n, 277 N.E.2d 499, 502-03 (Mass. 1972) (state statute which required married taxpayers to file joint returns in order to obtain refund did not deprive

taxpayer of equal protection even though statute permitted divorced or legally separated persons to file return individually and obtain refund) (Pa15-16). The Appellate Division decision is thus completely consistent with other state and federal precedents.

In short, the Peden case does not present a conflict requiring this Court to decide whether to grant certiorari because this decision does not conflict with a decision of the highest court of another state as required under Sup. Ct. R. 10.1(b). The New Jersey taxing scheme follows the established caselaw from all state and federal appellate courts.

D. The New Jersey Law Against Discrimination is Irrelevant to An Analysis of Whether Gross Income Tax Statutes are Constitutional.

Petitioners claim that the New Jersey courts erred by not applying the New Jersey Law Against Discrimination, ("LAD") N.J.S.A. 10:5-1 to 10:5-42, to analyze whether the GIT statutes violate equal protection and due process guarantees. This argument is equally without merit because this case raises the question of whether two state income tax statutes violate federal equal protection and due process guarantees. The Legislature did not enact the LAD to address rational distinctions based on marital status contained in taxing statutes. Since the LAD targets individual acts of discrimination in certain areas such as housing and employment, the New Jersey LAD is irrelevant to this analysis.

Federal courts determine the meaning of a fundamental right or a suspect class under the United States Constitution. The existence of the LAD cannot render inapplicable this Court's rationale in Zablocki v. Redhail; Califano v. Jobst; Mapes v. United States, supra, all ruling that classifications

based on marital status in taxing statutes do not infringe on a fundamental right. The New Jersey LAD has no bearing whatsoever on the constitutional analysis of taxing statutes. This case concerns a broad legislative classification in a taxing statute, not individual acts of discrimination.

In sum, the statutory classifications found in the GIT provisions at issue do not interfere directly or substantially with the right to marry. The New Jersey courts properly applied a rational basis test to determine the constitutionality of the GIT statutes and no further review in this Court is necessary.

CONCLUSION

For the reasons set forth above, it is respectfully requested that the Petition for Writ of Certiorari be denied.

Respectfully submitted,

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Dated: February 14, 1995

(3)

No. 94-1203

Supreme Court, U.S.
FILED
MAR 15 1995
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In The

Supreme Court of the United States

October Term, 1994

JAMES WILLIAM RINIER AND CARMELLA FORZIATI,

Petitioners,

vs.

STATE OF NEW JERSEY,

Respondent.

On Petition for Writ of Certiorari to the Supreme Court of New Jersey

REPLY BRIEF FOR PETITIONERS

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19pp

TABLE OF CONTENTS

Page

Table of Contents.....i

Table of Citations.....ii

Reply.....1

Conclusion.....12

TABLE OF CITATIONS

Page

Cases Cited:

Califano v. Jobst
434 U.S. 47 (1977).....4

Eric Peden v. State of Kansas
73,065 (Kansas Supreme Court).....7, 8

Hoeper v. Tax Commission of Wisconsin,
284 U.S. 206 (1931).....2, 4, 5, 6, 8

Mapes v. United States
576 F.2d 896 (Ct. Clms. 1978),
cert. denied, 439 U.S. 1046 (1978).....4, 5, 6

Zablocki v. Redhail
434 U.S. 374 (1978).....4

N.J.S.A. 10:5-12.....9, 10

APPENDIX

Appendix F - In The Supreme Court
of Kansas, Ordered February 8, 1995.....1a

No. 94-1203

In The
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1994

JAMES WILLIAM RINIER AND CARMELLA FORZIATI,
Petitioners,

-versus-

STATE OF NEW JERSEY,
Respondent.

Petition for Writ of Certiorari to the Supreme Court of New Jersey

REPLY BRIEF FOR PETITIONERS

Respondent's arguments highlight why this Court should allow further review and grant the petition. Overall, New Jersey has violated the precedence of this Court, decided a question different from that of another state and ignores its very laws against the discrimination of its inhabitants based on marital status.

1. The Court Should Grant The Petition To Stop Respondent From Violating The Precedence Set By This Court In *Hoeper v. Tax Commission of Wisconsin*, 284 U.S. 206 (1931).

Respondent contends that there exists a choice for New Jersey married couples to avoid the discriminatory tax on marriage in their state because they can file married filing separate for federal purposes. According to Respondent, ". . .married taxpayers may choose to file separate returns and thus avoid "attribution" of their income to the income of their spouse. Any aggregation of the two spouses' income on a federal and New Jersey gross income tax joint return is a voluntary matter." (R10)[1]

New Jersey is playing a game. There is absolutely no doubt that the only reason New Jersey forces married couples to file joint when they file their federal joint, is to prevent the loss of tax revenue. It is well understood, that a married couple would usually benefit from filing a joint federal income tax return rather than a

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[1] "R" refers to Respondent's Brief in Opposition.

married filing separate return. Thus, a married couple will file joint federal and joint for New Jersey to lesson the overall tax burden. Is this what the courts consider a choice or voluntary decision?

The excuse of administrative convenience should not be accepted. With today's computer technology and every individual who earns wages, interest, dividends, capital gains having a social security number, auditing and compliance does not require the federal return being filed in the same manner as the state return. At times even the wages for federal and state purposes on the W-2 (wage and tax statement) differ. The key to the compliance system are the federal W-2 statements, Form 1099 statements, and the K-1 statements which contain the taxpayer identification number or otherwise known as the social security number for an individual. The state of New Jersey even requires the placing of a spouse's social security number on a separately filed income tax return. Respondent has not even attempted to demonstrate why

administrative convenience is a reason for the joint filing requirement.

Realizing that the Court needs to have authority to right this wrong, Petitioners point to the valid U.S. Supreme Court decision, *Hoeper v. Tax Commission of Wisconsin*, 284 U.S. 206 (1931). Respondent argues that the cases *Mapes v. United States*, 576 F.2d 896 (Ct. Clms.1978), cert. denied, 439 U.S. 1046 (1978); *Zablocki v.Redhail*, 434 U.S. 374 (1978); and *Califano v. Jobst*, 434 U.S. 47 (1977) allows the state of New Jersey to exact the additional tax on married couples so long as the statute does not "directly interfere" with the right to marry. In *Hoeper*, supra at 218, the additional tax on a married person was struck down eventhough there was not a direct interference. "There is no room for the suggestion that qua the appellant and those similarily situated the act is a reasonable regulation, rather than a tax law."

Moreover, in *Mapes*, supra at 902, the opinion in its analysis of *Hoeper*, supra, did claim that, "In most respects, the Wisconsin law is on all fours with the scheme. . .." The only difference that the Court noted was that, "The federal scheme, on the other hand, offers married couples the opportunity to file separately and each be taxed individually on his or her own income." Petitioners have a problem with this definition of opportunity or as discussed by Respondent, choice or alternative; however, it must be noted that there is a key difference between *Mapes*, supra and the method New Jersey employs.

A married couple on the federal return can simply choose to either file separate or joint. Their decision does not rest on how any other returns have been filed. This is clearly not the case in New Jersey. The filing of joint or separate for New Jersey purposes is dependent on how their federal tax return is filed. Thus, there is more of a restriction in the instant case than analyzed in *Mapes*, supra.

Suppose a married couple files their federal return prior to the preparation and filing of their New Jersey return. By New Jersey law, they must file their New Jersey return on a joint basis. But realizing that the filing of a joint New Jersey return will create a greater tax liability, the married couple decides to file separately for New Jersey purposes. Who now owes the additional tax that New Jersey by law is owed? Should the state of New Jersey seek relief from the wife or the husband? Should both be found liable for the additional tax? Who has violated the tax law? Both the husband and the wife? This would never happen under the federal scheme. Thus, *Mapes*, supra does not support the Respondent's position.

As was noted in *Hoeper*, supra at 217, "It can hardly be claimed that a mere difference in social relations so alters the taxable status of one receiving income as to justify a different measure for the tax."

2. The Court Should Grant The Petition Since The Supreme Court Of The State Of Kansas Has Thus Far Ordered The Dismissal Of The Appeal By The State Of Kansas In The Case Of *Eric Peden v. State of Kansas*, 73,065 (Kansas Supreme Court).

Respondent in discussing the requirement of a conflict between the highest courts of two states in regards *to Eric Peden v. State of Kansas*, 73,065 (Kansas Supreme Court) failed to mention in their analysis the Order dated February 8, 1995 (Respondent's Brief in Opposition was dated February 14, 1995) that dismissed the appeal by the defendant, the state of Kansas. (See Appendix F in this Reply). Granted, this matter may not be over yet, but the state of Kansas is having a tough time with the appeal. Even the Kansas Senate Assessment and Taxation Committee has approved a bill at to the request of the Kansas Department of Revenue that would significantly shorten the time taxpayers can claim a refund based on constitutional claims.

Respondent is again trying to simply distinguish itself from unfavorable cases by pointing out the insignificant differences that

exist in the method of tax computation and the difference in top rates. Even in *Hoeper*, supra, the taxpayer filed separately, but was taxed greater than an unmarried individual. Should not the result of a tax scheme be the focus of whether or not a tax law is constitutional? Although the method and top rate may be different between Kansas and New Jersey, the different tax treatment of a married person versus a single person is the issue.

The ruling in *Peden*, supra is the realization that the time has come for the states to realize that the differences between an unmarried person and a married person is dwindling. Respondent has even avoided discussing the issue of the similarity of an unmarried couple and a married couple. How can any court not find it an offense that the simple act of marriage subjects an individual for higher taxes.

3. The Court Should Grant The Petition Because The New Jersey Courts Did Not Give A High Enough Review To The Discrimination In View Of New Jersey's Law Against Discrimination.

Petitioners can not understand how the state of New Jersey on one hand tells its residents that they can not discriminate on the basis of marital status, but the state of New Jersey discriminates in its tax statutes. Respondent contends that the New Jersey Law Against Discrimination ". . .targets individual acts of discrimination in certain areas such as housing and employment, the New Jersey LAD is irrelevant to this analysis." (R14)

For example, it should be noted in the New Jersey Law Against Discrimination at N.J.S.A. 10:5-12 that "It shall be an unlawful employment practice, or, as the case may be, an unlawful discrimination: . . .l. For any person to refuse to buy from, sell to, lease from or to, license, contract with, or trade with, provide goods, services or information to, or otherwise do business with any other person on the basis of the race, creed, color, national

origin, ancestry, age, sex, affectional or sexual orientation, marital status, liability for service in the Armed Forces of the United States, or nationality of such other person or of such other person's spouse, partners, members, stockholders, directors, officers, managers, superintendents, agents, employees, business associates, suppliers, or customers. . .."

Overall, the New Jersey Law Against Discrimination forbids the treatment of another person economically on the basis of such classifications as marital status. How can it be that in the state of New Jersey it is acceptable discrimination for the state to exact a greater tax from a married person over a single person just because of their marital status, but tell its inhabitants in all their business dealings that marital status can not be a factor in their dealings. In other words, how can New Jersey be allowed to discriminate against a married person, but its residents can not?

Petitioners have requested that the U.S. Supreme Court use a basis of review greater than rational basis, whether that basis is intermediate scrutiny or strict scrutiny. Petitioners believe that New Jersey's Law Against Discrimination can not be ignored since it plainly puts marital status along the same lines such as race, creed, age, and sex.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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and

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Dated: March 13, 1995

APPENDIX F - IN THE SUPREME COURT OF THE STATE OF KANSAS ORDERED FEBRUARY 8, 1995

IN THE SUPREME COURT OF THE STATE OF KANSAS

No. 73,065

ERIC PEDEN,
Plaintiff/Appellee,

v.

STATE OF KANSAS, et al.,
Defendants/Appellants.

ORDER

Now on this 8th day of February, 1995, the above-captioned matter comes on before the court on plaintiff's motion to dismiss the appeal filed by defendants.

The procedural facts relevant to plaintiff's motion are the following: Summary judgment was granted in favor of the plaintiff, holding provisions of K.S.A. 79-32,110 unconstitutional. The journal entry of judgment was entered on November 4, 1994. On November 7, 1994, the defendants filed a notice of appeal.

Plaintiff timely filed three post-judgment motions pursuant to K.S.A. 60-252(b) on November 14, 1994. The district court has not ruled on the plaintiff's motions.

In *Resolution Trust Corp. v. Bopp*, 251 Kan. 539, 836 P.2d 1142 (1992), the notice of appeal was filed after one of the defendants filed a motion to alter or amend the trial court's judgment. This court held that since the district court subsequently denied the motion to alter or amend, the appellee suffered no prejudice and the premature notice of appeal was saved by Supreme Court Rule 2.03 (1994 Kan. Ct. R. Annot. 8).

Here, since the district court has not yet ruled on the plaintiff's motions, the defendants' premature notice of appeal is not saved by Supreme Court Rule 2.03. Therefore, the plaintiff's motion to dismiss the defendants' appeal is granted.

It is so ordered.

FOR THE COURT

s/ Donald L. Allegrucci
DONALD L. ALLEGRUCCI
Justice